

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-202722

DATE: July 24, 1981

MATTER OF: Goodyear Aerospace Corporation

DIGEST:

1. Procuring agency may properly make only one award for second phase of major weapons system procurement--even though two awards were planned--where proposal evaluation reveals that one proposal is far superior to other proposals.
2. GAO concludes that procuring agency's determination to make only one award instead of two awards for second phase of major weapons system procurement was based on outcome of proposal evaluation and was not result of change in disclosed requirements.
3. Protester contends that procuring agency improperly evaluated its proposal and failed to recognize limitations and risks in higher rated proposal. GAO has no basis to object to procuring agency's evaluation of relative desirability of proposals where record reflects agency's reasonable and specific bases for its relative assessment of proposals and protester's comments provide no basis to question that evaluation.
4. Where eligibility for award of second phase of major weapons system procurement is restricted to contractors participating in first phase, procuring agency may properly award contract for second phase to firm which was part of team that was awarded contract for first phase. Record shows that (1) team initially proposed that

[Protest of Navy Determination to Select One Contractor Instead of Two]

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one firm would manage first phase and other firm would manage subsequent phases, and (2) agency agreed to proposed management arrangement.

Goodyear Aerospace Corporation (Goodyear) protests the Navy's determination to select one contractor instead of two for award of a phase II Demonstration and Validation contract and an associated sustaining engineering contract in support of the Navy's Anti-Submarine Warfare Stand-Off Weapon Program. Goodyear also protests the Navy's selection of Boeing Aerospace Company (Boeing) as the phase II contractor.

The protester essentially contends that the Navy's determination to select only one contractor is a material change in requirements made before the competition was completed, which should have been communicated to offerors so that proposals could have been based on the Navy's actual needs. Goodyear also contends that only the four Concept-Formulation-Study-(phase I) contractors were eligible for award in phase II and Boeing was not one of the four phase I contractors.

The Navy intended to select two contractors for phase II. However, after the competitors' proposals were evaluated, the Navy determined that Boeing's approach alone would best meet the Navy's technical and mission requirements based on the technical superiority of Boeing's proposal and, to a lesser degree, the similarity between the Boeing and Goodyear approaches. The Navy also reports that Boeing was eligible for award based on its team arrangement with another firm.

We conclude that Goodyear's protest is without merit.

In August 1979, the Navy issued request for proposals (RFP) No. N00024-79-R-6054(Q) for a concept formulation study for the new weapon and a formal proposal to conduct a demonstration and validation of the proposed concept. The RFP stated that the program was divided into four phases: concept formulation, demonstration and validation, full-scale engineering and

development, and production and deployment. The RFP advised that up to five contracts may be awarded for phase I and that, after evaluation of phase I submissions, the Navy "will select two contractors" to proceed into phase II.

In February 1980, the Navy awarded phase I contracts to Goodyear, McDonnell Douglas Astronautics Company, General Dynamics Corporation, and Gould, Inc. Gould proposed to manage phase I while Boeing would manage the subsequent work. In October 1980, the contractors submitted initial phase II proposals. With the Navy's acquiescence, the Gould and Boeing team's proposal was in Boeing's name with Gould as the major subcontractor. Written and oral discussions were held and, in February 1981, best and final offers were submitted. After detailed review, the Navy's Source Selection Council (SSC) determined that only one contractor should be selected for phase II. On March 6, 1981, the chairman of SSC advised the Navy's Source Selection Authority (SSA) that the "program can be accelerated by awarding a single [phase II] contract. This will bring the weapons system into the fleet at an earlier [time] with substantially lower development cost." On March 9, 1981, the SSA sought higher level approval to make only one award.

Late in March 1981, the Navy requested that Boeing revise its proposal based on a possible increase in the level of funding. The Navy had requested proposals based on \$5.3 to \$5.5 million for sustaining engineering. On April 17, 1981, 2 days after obtaining the higher level approval, the Navy awarded a contract in the amount of \$10.6 million to Boeing for sustaining engineering. The purpose of the sustaining engineering award is to permit the contractor to retain a cadre of the development team so that phase II work can continue. Award of the contract for the other phase II work will not take place until the Defense Systems Acquisition Review Council determines that the new weapon's development should proceed through phase II. The council is scheduled to meet in August.

As for the first basis of protest that the Navy's selection of only one contractor was a material change

in Navy requirements, Goodyear argues that the Navy believed that the delivery date of the new weapon to the fleet could be accelerated and the development costs reduced if only one contractor was selected. Goodyear contends that the Navy's desire to accelerate the delivery date constitutes (1) a significant change in requirement from the timetable previously outlined by the Navy or (2) an undisclosed evaluation factor. Goodyear relies on the March 6, 1981, memo, the amount of the sustaining engineering award to Boeing, and the Navy's adjustment of the projected fleet delivery date by several months. Goodyear states that it would have made substantial changes to its proposal if it knew that the Navy would select only one contractor.

Goodyear believes that the selection of one contractor's technical approach based primarily on paper studies and analyses is an inadequate technical basis for determining the optimum approach for this major weapons system, which is expected to cost in excess of \$1.9 billion. The protester also believes that experience shows the high risk associated with selecting a single technical approach prior to at least some building and testing of hardware. Goodyear recommends that the choice be deferred until after phase II, which would be in accord with the procedures outlined in Office of Management and Budget Circular A-109 and Department of Defense Directive 5000.1.

In response, the Navy reports that it planned to select two phase II contractors but evaluation of the phase II proposals revealed that only one award to Boeing was justified. The Navy's determination was based on the following: (1) by a clear margin, Boeing's approach received the highest score, offered the lowest risk and greatest assurance of meeting the fleet delivery date, and best met the Navy's technical requirements; (2) Boeing's approach was similar to the second highest scored offeror, Goodyear; (3) some technical leveling might occur during phase II if two contracts were awarded because the Navy would have had to provide direction to correct technical deficiencies in Goodyear's approach; (4) Boeing's approach offered sufficient promise of success so that parallel development was not required

for the success of the program; and (5) given the promise of Boeing's approach and the drawbacks of the others, funding should be concentrated on the one superior approach.

The Navy essentially contends that the one contractor decision was driven by the results of the competition, and there was no determination to select only one contractor until after proposals were evaluated in accord with the announced criteria. Further, the Navy explains that the late March discussion with Boeing was proper because, at that point, the Navy's SSA had determined that only one award was justified; at that time, it became necessary to discuss revision of Boeing's approach in light of the increased funding available. Finally, the Navy points out that the March 6 memo merely discusses the consequences of awarding only one contract, rather than a basis for the single selection.

In reply, Goodyear contends that the Navy's judgment of Goodyear's technical proposal was based on the Navy's failure to evaluate properly Goodyear's proposal. This contention and the Navy's rebuttal involve proprietary aspects of Goodyear's proposal and have not been made a part of the public record in this matter. Thus, this decision will discuss these matters without mentioning the proprietary material.

Next, Goodyear contends that there are significant differences between Boeing's approach and Goodyear's approach. In Goodyear's view--(1) Boeing's approach makes weight a design-driving factor, thus making the concept nonviable if there is too much weight growth; (2) Boeing's approach presents a significant control problem at water exit in high seas or shallow water, which is not present in Goodyear's approach; (3) Boeing's approach presents significant design problems in the rocket motor case and the canister, compared to Goodyear's proposed use of standard materials; and (4) Boeing's approach is less flexible than Goodyear's to accommodate changes in payload or changes in capabilities of enemy submarines. In contrast, Goodyear believes that no major technical deficiencies exist in its approach.

In rebuttal, the Navy provides a point-by-point response to Goodyear's technical arguments. The Navy states that all pertinent aspects of Goodyear's proposal were considered and that a rational basis exists for the Navy's evaluation of Goodyear's proposal. Further, the Navy reports that Goodyear did not score first in any evaluation subcategory.

While the Navy agrees that differences existed between Boeing's and Goodyear's approaches, the Navy observes that there are similarities in rocket motor engines, the direct-attack mode, and other types of general characteristics and limitations. The Navy reports, however, that the major factor in selecting only one contractor was the overwhelming Boeing technical superiority, not the similarities in approach.

From the record, it appears that the Navy did not consider less than two phase II contractors until the SSC completed its evaluation of the best and final offers submitted for phase II. The record indicates that proposals were evaluated in accord with the evaluation criteria disclosed by the Navy. After proposal evaluation, from the Navy's viewpoint, there were two proposals that were noncompetitive, one significantly superior technical proposal and one which proposed an approach similar to the superior one with significant technical deficiencies. At that point, the Navy first considered making only one award. The March 6 memo recommends the Boeing proposal as "the one which best fulfills the Navy's mission need." The memo then discusses the consequences of making only one award on the projected delivery and cost. The subsequent discussions with Boeing and the adjustment in the Fleet delivery date were, therefore, merely logical consequences of making only one award.

In our view, one of the foreseeable circumstances that could properly result in only one award where two were planned is that one proposal is so far superior to the others that there is in essence a competitive range of one. We are not aware of any legal requirement obligating the Government to keep a firm in a competition by making award based on a proposal which has no possibility of being improved to the point where it

could win the competition. On the contrary, in such circumstances, the agency would be doing a disservice to the vendor by encouraging the competitor to commit more time and money to a competition that it had no reasonable chance to win. Here, the RFP stated the Navy's intention to make two awards but that provision does not require the Navy to make a second award based on a proposal that is not competitive. Further, we perceive no prejudice to Goodyear flowing from this interpretation of the RFP.

Accordingly, we conclude that the outcome of the proposal evaluation--not a change in the Navy's requirements--was the basis for the Navy's determination to select only one superior contractor.

In considering protests concerning a procuring agency's evaluation of proposals, we recognize that the relative desirability of proposals is largely subjective, primarily the responsibility of the procuring agency, and not subject to objection by our Office unless shown to be unreasonable, arbitrary, or violative of law. See, e.g., Skyways, Inc., B-201541, June 2, 1981, 81-1 CPD _____. Here, the record shows that the Navy believed that Goodyear's technical proposal had several major deficiencies.

First, Goodyear assumed that far too much of the total weight of the torpedo would be attributed to the structure; this resulted in Goodyear giving too little attention to aerodynamic heating problems and significantly reduced the Navy's confidence that Goodyear had properly considered this matter. In its proposal, Goodyear stated that if heating becomes a problem, alternate design options are available. The Navy viewed the heating problem as a present one--affecting the reliability and effectiveness of the entire weapons system--that required more thoughtful analysis in the proposal instead of mere mention that other design options are available. We find that the Navy's judgment regarding this critical aspect of Goodyear's proposal was not shown to be unreasonable because the Navy reasonably concluded that Goodyear's delay in addressing the problem could have resulted in significant negative impact on program cost and schedule.

Second, Goodyear made significant changes to its rocket motor design in its best and final offer without sufficiently explaining the changes. In addition, the Navy was not satisfied with Goodyear's analyses of possible erosive burning. The Navy considered Goodyear's hydraulic system design to be high risk and Goodyear's thrust reversal analysis to be inadequate and unconvincing. Third, Goodyear's primary design was based on a maximum length of the torpedo which was not the length that the Navy wanted considered. Goodyear's proposal did address the greater torpedo length but not sufficiently to convince the Navy that Goodyear's design could accommodate the longer torpedo without significant adverse impact on program cost and schedule. Again, we find nothing in Goodyear's comments to provide our Office with a basis to object to the Navy's technical evaluation in these areas.

Accordingly, we have no basis to conclude that the Navy's evaluation of Goodyear's proposal was unreasonable, arbitrary, or violative of law. Further, the record indicates that the Navy was aware of the limitations and risks associated with Boeing's proposed approach, as Goodyear pointed out; however, in the Navy's view, Boeing's proposal contained no fundamental flaws or high risk areas, and no significant technical direction from the Navy would be required. Thus, we have no basis to question the Navy's evaluation of Boeing's proposal.

Therefore, the Navy could properly make only one award since Boeing's proposal was considered superior by a clear margin.

Goodyear's second basis of protest is that Boeing is not eligible for selection as the phase II contractor. Goodyear argues that Boeing was a subcontractor to Gould for phase I and that, under the RFP, only phase I contracts were eligible for phase II award.

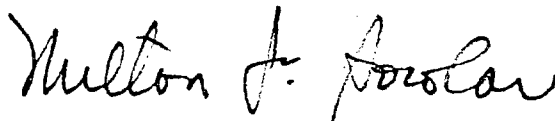
In response, the Navy reports that Gould and Boeing proposed a team arrangement with Gould managing phase I and Boeing managing subsequent phases. This arrangement was acceptable to the Navy. In reply, Goodyear contends that it was prejudiced by not knowing from the Gould

contract that Goodyear would be competing against Boeing in phase II. We note that Goodyear does not deny actual knowledge of Gould's arrangement with Boeing; instead, Goodyear contends that certainty was lacking because Gould's contract did not state that Boeing would be managing subsequent phases. Goodyear's argument is essentially that, lacking contractual certainty, Goodyear was hindered in developing its proposal strategy. Alternatively, Goodyear argues that it does not have to demonstrate that it was actually prejudiced because the Navy did not observe the express provisions of the RFP.

Both the Navy and Goodyear rely on our decision in Hoffman Electronics Corporation, 54 Comp. Gen. 1107 (1975), 75-1 CPD 395, for support. We held in Hoffman that the Air Force had a reasonable basis to restrict competition for a follow-on production contract to the two contractors that were awarded development contracts. The Hoffman decision is not controlling because the situation is different. Here, in substance, we believe that Boeing can be described as a phase I contractor entering the competition at phase II.

The record shows that Gould and Boeing proposed a team arrangement, the Navy agreed, and the team followed through in the proposal. From the Government's standpoint, we find no basis to object to Boeing's eligibility for award. Further, in the circumstances, we believe that the possible prejudice to Goodyear does not provide a valid basis for our Office to object to the phase II award to Boeing. Accordingly, we find this aspect of Goodyear's protest is without merit.

Protest denied.



Acting Comptroller General
of the United States